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Supreme Court, U.S.
FILED

No. 09-503 SEP 22 2009

OFFICE OF THE CLERK

In The

Supreme Court Of The United States

MICHAEL A. HENSE,
Petitioner

v.

YOKO HENSE,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE STATE OF NEW YORK COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

MICHAEL A. HENSE *
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Kew Gardens, NY 11367
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* *Pro Se*

QUESTIONS PRESENTED

Whether the New York State Court of Appeals erred in it's sua sponte dismissal of the appeal of Petitioner Michael A. Hense, in its Order of June 25th 2009, for the stated reason "that the appeal be and hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved".

Whether the lower Court, in deciding the underlying matrimonial matter, did violate the Petitioner's Fourteenth Amendment right not to be deprived of property without due process and equal protection of the law, when it did order the pendente lite sale of the marital residence.

PARTIES TO THE PROCEEDINGS

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JURISDICTION

The New York State Court of Appeals entered its Decision on June 25th, 2009 dismissing the Appeal sua sponte . This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

The Fourteenth Amendment to The Constitution of The United States, Section 1, at part were it states that "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws", citing Kahn v Kahn, 43 N.Y.2d 203, 371 N.E.2d 809, 401 N.Y.S.2d 47; Harrington v. McManus, 303 A.D.2d 368, 755 N.Y.S.2d 661; Kayden v. Kayden, 234 A.D.2d 345, 650 N.Y.S.2d 790; Sedgh v. Sedgh, 142 Misc. 2d 931; 539 N.Y.S2d 255; Adamo v. Adamo 18 A.D.3d 407; 794 N.Y.S.2d 413.

Title 42, Chapter 21, Section 1983 of the U.S. Code provides federal statutory predicate for the judicial redress of Fourteenth Amendment violations at part "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable" citing Fuentes v. Shevin, 407 U.S. 67 (1972).

Section 6-2.1 and 6-2.2(b) of New York Estates, Powers and Trusts Law provides statutory basis for the principles of property possession, at part "When estate is in common, in joint tenancy or by the entirety (b) A disposition of real property to a husband and wife creates in them a tenancy by the entirety, unless expressly declared to be a joint tenancy or a tenancy in common" citing Kahn v Kahn, 43 N.Y.2d 203, 207, 371 N.E.2d 809, 811, 401 N.Y.S.2d 47, 49(1977);

Section 236 (B)(5)(a) of New York Domestic Relations Law states " Disposition of property in certain matrimonial actions. a. Except where the parties

have provided in an agreement for the disposition of their property pursuant to subdivision three of this part, the court, in an action wherein all or part of the relief granted is divorce, or the dissolution, annulment or declaration of the nullity of a marriage, and in proceedings to obtain a distribution of marital property following a foreign judgment of divorce, shall determine the respective rights of the parties in their separate or marital property, and shall provide for the disposition thereof in the final judgment", citing Kahn v Kahn, supra).

Section 5519(a)(6) of New York Civil Practice Laws and Rules (CPLR) states. "Stay of enforcement. (a) Stay without court order. Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to
appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where: 6. the appellant or moving party is in possession or control of real property which the judgment or order directs be conveyed or delivered, and an undertaking in a sum fixed by the court of original instance is given that the appellant or moving party will not commit or suffer to be committed any waste and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the value of the use and occupancy of such property, or the part of it as to which the judgment or order is affirmed, from the taking of the appeal until the delivery of possession of the

property; if the judgment or order directs the sale of mortgaged property and the payment of any deficiency, the undertaking shall also provide that the appellant or moving party shall pay any such deficiency".

STATEMENT OF THE CASE

This case not pose a question of law, nor does it require a determination as to the pertinent facts and issues surrounding it. The relevant facts and issues are already part of the record, and as such, are indisputable as to their occurrence. The law and opinions of the courts regarding the issues in dispute have been well settled and are part of the history of cases decided before this Court and before other courts throughout the land. This case seeks not to establish precedence, but only to rely on past precedence and rulings in its prayer for justice.

The right to hold title to, and to enjoy the privileges and benefits of real property ownership are one of the fundamental tenets of the American way of life. Such is the importance of this ideal that it was viewed by the framers of our Constitution as a fundamental right of the individual. As such, provisions to insure this fundamental right have been amended to the language of the Constitution, and has, throughout the history of our country, been reiterated and restated by the lawmakers of this land.

On October 23rd, 2006, during the proceedings in the case of Hense v. Hense, in a matrimonial action before the Supreme Court of the State of New York, Index# 04439/2006, as testified to by the record of those proceedings, the Court did act to deny petitioner Michael A. Hense his right not to be deprived of his property without due process of law, and it did also act to deny him the equal protection of the laws when it did Order the immediate sale of the marital residence, of which he was a proper owner as tenant by the entirety, prior to a dissolution of the marriage, and thereby effectively granting the then spouse exclusive use and occupancy of the marital home to the extent of directing its immediate sale; and it did so in the absence of any authority under any law; and it did so prior to any meaningful and timely opportunity for a hearing on the facts which did deny Petitioner an opportunity to dispute the Order. In subsequent proceedings, the Court did take steps to insure that the Petitioner did continue to be denied an equitable opportunity to dispute the directives of that Order by a manipulation of the process which resulted in a fraudulent "stipulation" on which the Court justified its Final Order.

At the first appearance by the parties before the Court, the spouse's Attorney did verbally move for the immediate sale of the marital residence saying, "We're requesting that the house be placed on the market immediately, Your Honor". Upon such the Court did issue a verbal directive granting that motion stating to the Petitioner, "So you're going to sign a stipulation today, at least, so you can put the

house on the market for sale and the funds will be held escrow by the attorney". Justice Martin further directed "So that's what I need. I need a stipulation, counsel -- I don't know where the forms are in the court. A stipulation as to the disposition date, the distribution of the cars. They're not actually going to be distributed, but an agreement to distribute the cars and place the house on market for sale immediately. So those three items should be in the stipulation".

An Order was drawn up by opposing counsel, and was entered as an Order of the Court on that same date, at those same proceedings, and I was directed to sign that Order.

An Interlocutory Appeal was submitted by the Petitioner on March 30th, 2007, in which Petitioner opposed the immediate sale of the marital home prior to a dissolution of marriage and without being given the option to refuse the sale, as grounds for his appeal.

On April 4th, 2007 the sale of the marital property took place pursuant to the October 23rd Court Order, at the insistence of the Court, and under direct threat of eviction and loss of all rights of the Petitioner to his property by the Court and by the adversary counsel acting on behalf of the Court.

On April 27th, 2007, the Appellate Court handed down its Decision and Order denying the interim Appeal on the court's own motion, stating that "the

order is not appealable as of right (see CPLR 5701), and we decline to grant leave to appeal".

On October 25th, 2007, a Decision and Order of Divorce was entered by the New York Supreme Court, County of Westchester granting a divorce to the Petitioner based on the proceedings of May 21st and May 22nd 2007, during which the Court continued to deny the Petitioner his right to a trial, continued to deny the Petitioner his right to present the facts in regards to outstanding disputed issues regarding the equitable distribution of marital property, continued to deny the Petitioner an opportunity to present proof of the dissipation of those marital assets prior to commencement of the action, assets which could've been instrumental in saving the marital residence until after the dissolution of the marriage, and also during which the Court did act to coerce a "settlement" in the guise of a trial, while constantly stating that Petitioner would be allowed to question the spouse at the trial.

On October 25th A Notice of Appeal was filed, and on perfected Appeal was again brought before the Appellate Courts of the State of New York Supreme Court.

REASONS FOR GRANTING THE PETITION

We've recently witnessed the Confirmation Hearings for the Honorable Sonia Sotomayor rise to Associate

Justice of The Supreme Court, during which we heard repeated so many times the phrase "Rule Of Law". "Fidelity to the law" - the task of a judge is not to make the law, it is to apply the law".

I submit, that in this seemingly insignificant case that has struggled to find it's way to the doorstep of the highest court in the land, rule of law was the first of many things to be thrown out the window.

I. THE COURT LACKED JURISDICTION AND AUTHORITY UNDER LAW WHEN IT ORDERED THE SALE OF THE MARITAL RESIDENCE PRIOR TO DISSOLUTION OF THE MARRIAGE. The Court Order of October 23, 2006 was made prior to the final Order, and thus should be overturned for lack of jurisdiction and lack of authority under law.

II. THE APPELLATE COURT FAILED TO ADDRESS THE ISSUES ON APPEAL, when it totally ignored the Petitioner's Fourteenth Amendment claims of violation of due process and equal protection under the law.

III. THE APPELLATE COURT ERRED IN ITS OPINION WHEN IT FOUND THAT THE ASSERTIONS OF THE PETITIONER WERE WITHOUT MERIT, FOR, as the record will show, the Petitioner was never afforded an opportunity to present his case and the issues regarding equitable distribution. Its assertions that its findings were based on a "trial" were in error. As evidenced by the

record, THERE WAS NO TRIAL, and proper and timely submitted motions were never acted upon.

IV. THE COURT OF APPEALS ERRED IN ITS OPINION THAT THE ISSUES RAISED ON APPEAL HAD NO CONSTITUTIONAL GROUNDS. Violation of the Fourteenth Amendment Rights of the Petitioner regarding due process and equal protection under law are a matter of record, and were properly raised for Appellate review.

CONCLUSION

Upon the grounds stated above, I respectfully submit that this petition to the Court be granted.

Respectfully Submitted

MICHAEL A. HENSE *
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(347)233-3906 * *Pro Se*

No. _____

In The

Supreme Court Of The United States

MICHAEL A. HENSE,
Petitioner

v.

YOKO HENSE,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE STATE OF NEW YORK COURT OF APPEALS

APPENDIX

Appendix A

Hense v Hense Motion No:
Slip Opinion No: 2009 NY Slip Op 76220
Decided on June 25, 2009
Court of Appeals Motion Decision
Yoko Hense, Respondent,
v
Michael A. Hense, Appellant.
Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

Appendix B

Hense v Hense Motion No: 2007-03024
Slip Opinion No: 2007 NYSlipOp 68262(U)
Decided on April 27, 2007 Appellate Division, Second Department, Motion
Yoko Hense, Respondent,
v
Michael A. Hense, Appellant.
—[*1] Michael A. Hense, Kew Gardens, N.Y., appellant pro se.
In an action for a divorce and ancillary relief, the defendant appeals, as limited by his brief, from stated portions of a judgment of the Supreme Court, Westchester County (Martin, J.), entered October 25, 2007, which, upon so much of an order of the same court dated May 21, 2007, as denied that branch of the defendant's motion which was for an award of interim maintenance, upon an order of the same court also dated May 21, 2007, denying the defendant's separate motion for leave to serve and

file an amended answer, inter alia, to assert a counterclaim alleging that the plaintiff fraudulently transferred and concealed marital assets, and, after a nonjury trial, among other things, equitably distributed the parties' marital property and failed to award him maintenance.

Ordered that the judgment is affirmed insofar as appealed from, without costs or disbursements.

The plaintiff former wife commenced this action for a divorce against the defendant former husband after more than 30 years of marriage. While the plaintiff appeared by counsel, the defendant's counsel withdrew prior to the trial date and the defendant appeared pro se thereafter.

On the day of trial, the Supreme Court denied the defendant's motion for an award of interim maintenance and also denied his separate motion for leave to amend his answer, inter alia, to assert a counterclaim alleging that the plaintiff fraudulently transferred and concealed marital assets.

In the course of narrowing the issues for trial in open court, the parties entered into a stipulation of settlement, which provided, inter alia, for the proceeds from the sale of the marital residence to be equally distributed, for the defendant to retain the contents of the marital home, and for the plaintiff to pay the defendant monthly maintenance in the sum of $600 for six months. The [*2]parties confirmed their respective agreement to the terms of the stipulation in open court.

Contrary to the defendant's contention, the court properly denied his motion for interim maintenance in light of the plaintiff's lack of financial means

(*cf. Pascazi v Pascazi*, 52 AD3d 664 [2008]; *Jordan v Jordan*, 2 AD3d 687 [2003]). The court also properly denied the defendant leave to amend his answer, inter alia, to assert a proposed counterclaim, since the record reveals that the lack of merit to the proposed amendment was "clear and free from doubt . . . [and that] the proposed amendment is palpably insufficient or patently devoid of merit" (*Lucido v Mancuso*, 49 AD3d 220, 226-227 [2008] [internal quotation marks omitted], *lv granted* 2008 NY Slip Op 68750[U] [2d Dept 2008]; *cf. Caruso, Caruso & Branda, P.C. v Hirsch*, 41 AD3d 407, 409 [2007]). The defendant's remaining contentions have been rendered academic or are without merit. Fisher, J.P., Angiolillo, Balkin and Belen, JJ., concur.

Appendix C

Hense v Hense Motion No: 2007-03024 Slip Opinion No: 2007 NYSlipOp 68262(U) Decided on April 27, 2007 Appellate Division, Second Department, Supreme Court of the State of New York
Appellate Division: Second Judicial Department
M53853
S/sl
STEPHEN G. CRANE, J.P.
DAVID S. RITTER
ROBERT A. LIFSON
RUTH C. BALKIN, JJ.
2007-03024
Yoko Hense, respondent,
v
Michael E. Hense, appellant.

(Index No. 06-4439)
DECISION & ORDER ON MOTION
Appeal by Michael E. Hense from an order of the Supreme Court, Westchester County, dated March 29, 2007.
Now, on the court's own motion, it is
ORDERED that the appeal is dismissed, without costs or disbursements, as the order is not appealable as of right (see CPLR 5701), and we decline to grant leave to appeal.
CRANE, J.P., RITTER, LIFSON and BALKIN, JJ., concur.
ENTER: James Edward Pelzer Clerk of the Court

Appendix D

Hense v Hense Index No: 04439/2006
Order Dated October 23, 2006
Yoko Hense, Plaintiff,
v
Michael A. Hense, Defendant.
The Supreme Court of The State of New York
County of Westchester, so Ordered.
IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:
The marital property located at 94 Waterbury Pkwy Cortlandt Manor New York will be immediately placed on the market for sale. Property will be listed with a licensed Real Estate Broker. All net proceeds from the sale of the property will be held in attorney's escrow account, pending resolution of the matrimonial action.

The motor vehicles of the marriage will be distributed as follows. The wife will take title to the 1998 Plymouth Voyager and the husband to the 1997

Dodge Stratus. Each party will execute any and all documents necessary to facilitate the transfer of the cars to the other spouse.
Each party will conduct depositions of the other spouse on Nov.1,2006 @ 10:0am at the Law Office of Janette A. Baxter, located at 246 Central Ave. White Plains, New York 10606.
Date:10/23/06 So Ordered.
Enter: (signed by Justice Latia W. Martin)
(signed by Janette A. Baxter, Attorney for the Plaintiff) and (signed by Michael A. Hense, Defendant).

Appendix E

Hense v Hense Index No: 04439/2006
Motion Date: 1/19/06
Yoko Hense, Plaintiff,
v
Michael A. Hense, Defendant.
Decided May 21st, 2007
Entered May 23rd, 2007
The Supreme Court of The State of New York
County of Westchester, so Ordered.

The following papers numbered 1 to 24 were read on this Notice of Motion submitted by the for various interim relief.

Papers Numbered

Order to Show
Cause/Affirmation/Affadvit/(Defendant) _____1-3
Affidavit/Affirmation in Opposition(Plaintiff) ___8-9
Reply Affirmation/Affidavits(Defendant) _____15-16
Exhibits_____4-7;10-14;17-24

Upon the foregoing cited papers, the Decision/Order of this Motion is as follows:

Defendant moved for various interim relief, including: 1)maintenance; 2)exclusive use and occupancy of the marital residence, including payment of the carrying charges; 3)medical insurance and payment of all uncovered medical and dental expenses; 4)life insurance and 5)counsel fees. The plaintiff opposed the defendnant's various applications.

Background

The parties were married on June 26, 1973. There are no unemancipated children of the marriage. The plaintiff/wife is 58 years old and is in good health. She has a high school diploma and is a real estate broker. She indicated that her monthly expenses total $4,141.43 and that she has earned $74,578.00 in 2005. She also indicated that her total income for 2006 was $5,000. The defendant husband is 56 years old and is in good health. He has a high school diploma and is currently an unemployed computer programmer. He indicated that his monthly expenses total $2709.72 and that he has no monthly income.

Interim Maintenance

The defendant argues that he is entitled to pendente lite maintenance in the amount of $500.00 per week because he is unable to adequately support himself. The defendant asserts that he has been unemployed since he lost employment as a computer programmer earning approximately $40,000 per year. The defendant states that he has been working on creating a video game with the consent of the plaintiff since 2003. The defendant asserts that he does not have any access to any liquid assets because the plaintiff transferred all the assets to her own accounts.

The plaintiff argues that the defendant is not entitled to pendente lite maintenance because she is not financially able to support herself or the defendant. The plaintiff states that despite the fact that she earned $72,000 in 2005 she used all the money to pay for the defendant's computers, car insurance, mortgage, taxes, food, commuting fees, and the defendant's credit card debts in the amount of approximately $20,000. The plaintiff asserts that she is currently unemployed because she was forced to flee from New York and reside with her son in North Carolina. The plaintiff states that she has obtained her real estate license in North Carolina but is not yet employed. The plaintiff states that her entire income for 2006 was $5,000 from management fees paid by the apartments she subcontracted to manage and a small fee paid by a former employer, JCAS for business generated from the continued use of her name. The plaintiff asserts that she is forced

to use credit cards to pay her monthly bills. The plaintiff also notes that she had to give the defendant $6,000 (cash advance on her credit card) before he would agree to sign the contract for sale of the marital residence. The plaintiff further argues that she did not agree that he could stay home and work on his video game. The plaintiff contends that the defendant has the ability to gain employment and become self-sufficient but has failed to do so.

When awarding maintenance, the Court considers and balances the factors enumerated in Domestic Relations Law § 236, Part B(6), such as financial status of the respective parties, their age, health, necessities and obligations, the nature and the duration of the marriage, the present and future capacity of each of the parties to be self-supporting, the tax consequences to the parties and to the income which the parties are capable of earning by honest efforts. Baker v. Baker, 120 A.D.2d 374 (1st Dept. 1986); Lowe v. Lowe, 211 A.D.2d 595 (1st Dept. 1995). Moreover, the court is also to consider the the standard of living established during the marriage. Hartog v. Hartog, 85 N.Y.2d 36 (1995). The purpose of interim maintenance is to "tide over the more needy party, not to determine the ultimate distribution". Roach v. Roach, 193 A.D.2d 660 (2nd Dept. 1993).

In the instant matter, both parties indicated that they are currently unemployed. Both parties also suggest that they have been using credit cards to provide for their daily living needs. The Court takes notice that the parties have sold the marital

residence and that each has agreed to take advances from the remaining proceeds to meet their needs. Based upon the facts and circumstances herein, the Court finds that the plaintiff does not have the financial ability to pay pendente lite support at this time. Lowe v. Lowe, 211 A.D.2d 595 (1st Dept. 1995). Neither party currently has stable employment and there is nothing on this record to suggest that the plaintiff has the financial means to pay interim maintenance. Accordingly, the defendant's application for pendente lite maintenance is hereby denied.

Exclusive Occupancy

The defendant's application for exclusive occupancy is hereby denied as moot. The marital residence has been sold and proceeds have been placed in escrow.

Medical Insurance and Life Insurance

The defendant's application for medical insurance is hereby denied. Based upon the record herein, the plaintiff lost her medical coverage when she left her place of employment. The Court finds that the plaintiff is not financially able to maintain or obtain medical insurance based upon her current financial status. The Court reserves decision on the defendant's application for life insurance coverage until trial in this matter.

Interim Counsel Fees

The defendant's application for counsel fees is hereby resolved in accordance with the Court's order

dated February 8, 2007.

The foregoing shall constitute the decision and order of the Court.
Dated: White Plains, New York
May 21, 2007 (signed)

HON. LA TIA W. MARTIN, JSC

Appendix F

Hense v Hense Index No: 04439/2006

JUDGMENT OF DIVORCE

Date October 11th, 2007
Entered October 25th, 2007
Yoko Hense, Plaintiff,
SS# 149-54-0623
-against-
Michael A. Hense, Defendant.
SS# 061-44-3355
The Supreme Court of The State of New York
County of Westchester
Hon. LAT TIA MARTIN, Justice Supreme Court

The Plaintiff having brought this action for a judgment of absolute divorce by reason of the Cruel and inhuman treatment of the Plaintiff by the Defendnant and the Summons bearing the notation "ACTION FOR DIVORCE" together with the Verified Complaint having been duly served upon Defendant personally within the State of New York; and the Defendant having appeared Pro Se, and

filing an Answer, denying the allegations in the Complaint, then appearing by his attorney ANDREW NITZBERG, Esq, and filing an Amended Answer to include a Counterclaim of Abandonment by the Plaintiff against the Defendant, then appearing Pro Se again, and the Plaintiff having appeared by her attorney JANETTE A. BAXTER, Esq., The parties having appeared before Justice LA TIA MARTIN, by due notice before the Court on March 1, 2007 to establish the grounds for the divorce, and the said grounds being uncontested by the Plaintiff. The parties having been unable to resolve the matter of equitable distribution, the matter was set down for trial. The parties not disputing the matter being heard and determined by the Hon. LA TIA MARTIN, Supreme Court Justice. The Plaintiff having appeared personally and by counsel, JANETTE A. BAXTER, Esq., and the Defendant having appeared PRO SE.

The matter was tried on May 21, 2007 and May 22, 2007 wherein both parties had a full and fair opportunity to present their issues, examine and cross examine their witnesses and the matter was duly recorded. I decide and find as follows and as stated in the Transcript of the Proceedings dated May 22, 2007 annexed hereto and made a part hereof.

NOW THEREFORE, on motion of JANETTE A. BAXTER, P.C., attorney for the plaintiff herein, it is

ADJUDGED: that the marriage between YOKO HENSE, Plaintiff and MICHAEL HENSE, Defendant is dissolved by reason of the Plaintiff's

abandonment of the Defendant, for a period of one or more years in accordance with Domestic Relations Law Section 170 Subdivision(2): and it is further

ADJUDGED: that there is one child of the marriage, to wit: MARK HENSE, date of birth October 17,1975, and no other children are expected; and it is further

ORDERED and ADJUDGED: in as much as there are no minor children to the marriage, custody, visitation and child support are specifically not addressed herein: and it is further

ORDERED and ADJUDGED: that the proceeds from the sale of real property located at 94 Waterbury Parkway, Cortlandt Manor, New York is marital property pursuant to DRL Section 236(B)(1)© and is to be distributed fifty (50) percent to each party; and it is further

ORDERED and ADJUDGED: that the two automobiles of the marriage be distributed in the following manner: the 1997 Dodge Stratus, to the Defendant Husband and the 1988 Plymouth Voyager to the Plaintiff Wife; and it is further

ORDERED and ADJUDGED: The Proceeds of the Chase Account ending in 1765 were combined with the funds in the checking account ending 9001. The combined total of Six thousand and Seven Hundred dollars ($6,700.00) was paid to the United States Treasury and Six Hundred Dollars ($600.00)

was paid to New York State; and it is further

ORDERED: All the contents of the marital home shall remain in the possession of the Defendant husband excluding Plaintiff wife's jewelry, which the plaintiff shall retrieve; and it is further

ORDERED: Defendant husband shall retain sole possession and control of the assets in his IKON work pension plan in exchange for Plaintiff wife keeping the Roth IRA account; and it is further

ORDERED and ADJUDGED: Plaintiff wife shall credit defendant husband for one half of the Four Thousand Five Hundred Dollars ($4,500.00) or $2,250.00 which was in the traditional IRA account ending in 7919; and it is further

ORDERED and ADJUDGED: Plaintiff wife will give to defendant one half of the value of the Discovery MFS Fund Account ending in 8263; and amount determined to be $3,630.00; and it is further

ORDERED and ADJUDGED: There is no determinable value to the Real Estate Broker's license and the Real Estate Broker's business; and it is further

ORDERED and ADJUDGED: Plaintiff wife will pay to the Defendant Husband the amount of Six Hundred ($600.00) monthly for six months as maintenance; said amount can be paid as a credit at

the time of distribution of the proceeds from the sale of the house; and it is further

ORDERED and ADJUDGED: Defendant will reimburse Plaintiff for one half the AARP Credit card debt, or Three Thousand Eight Hundred Twenty Two Dollars and Forty Six Cents ($3,822.46). Defendant will not be required to reimburse Plaintiff for the $9,000.00 credit card debt; and it is further

ORDERED and ADJUDGED: Defendant will pay the Plaintiff Fifty percent (50%) of the proceeds of the software, referenced to the Video game, limited to the first successful publication.

Dated: White Plains, New York
_____, 2007

ENTER:

(signed)

_____

HON. LAT TIA MARTIN, Justice Supreme Court

Appendix G

Hense v Hense Index No: 04439/2006

FINDING OF FACTS AND CONCLUSIONS OF LAW

Date October 11th, 2007
Entered October 25th, 2007
Yoko Hense, Plaintiff,
-against-
Michael A. Hense, Defendant.

The issues of this action having been heard before me as one of the Justices of this Court at Part___ hereof, held in and for the County of Westchester on May 21, 2007 and May 22, 2007 and having considered the allegations and proofs of the respective parties, and a trial on the issues of Equitable Distribution having been had thereon.

NOW, after haring the testimony and reading and considering the papers submitted, I do hereby make the following findings of essential facts which I deem established by the evidence and reach the following Conclusions of Law.

FINDING OF FACTS

FIRST: The Plaintiff and the Defendnant were both over the age of eighteen when this action commenced.

SECOND: That at the time of the commencement of this action and for a continuous period of more than two years immediately preceding

commencement of this action, Plaintiff and Defendant resided in the State of New York.

THIRD: That the Plaintiff and Defendant were married on the Twenty Sixth day June, 1973, in Rapid City, South Dakota.

FOURTH: That no decree, judgment or order of divorce annulment or dissolution of marriage has been granted to either party against the other in any Court of competent jurisdiction of this state or any other state, territory or country, and that there is no action pending for divorce by either party against the other in any Court.

FIFTH: That this action was commenced by filing the Summons with verified Complaint with the Westchester County Clerk on March 15, 2006. Defendant was served personally with the above stated pleadings. Defendant appeared Pro Se and filed a Verified Answer on April 3, 2006. On January 26, 2007 plaintiff via his then attorney Mr. Andrew Nitzberg. Esq., filed an amended answer to include a Counterclaim for a Judgment of Divorce on the grounds of the Plaintiff's abandonment of the defendant. The parties having appeared before Justice La Tia martin, by due notice before the Court on March 1, 2007 where defendant's established via testimony the grounds of actual abandonment of defendant by the plaintiff, and the plaintiff having not contested same.

The parties having been unable to resolve the matter of equitable distribution, the matter was set

down for trial. The parties agreed to the matter being heard and determined by the Justice Martin. The defendant appeared Pro Se, the Plaintiff appeared personally and by counsel, JANETTE A. BAXTER, Esq.,

The matter was tried on May 21, 2007 and May 22, 2007 both parties having had a full and fair opportunity to present their issues, examine and cross examine their witness and proceedings being duly recorded. And the court having given ample opportunity for the parties to address all the issues and concerns; I decide and find as follows and as stated in the transcript of the Proceedings dated May 21, 2007 and May 22, 2007, annexed hereto and made a part hereof.

SIXTH: That Defendant is not in the military service of the United States of America, the State of New York, or any other state.

SEVENTH: There is one child of the marriage, to wit: MARK HENSE date of birth October 17th, 1975, and no other expected children.

EIGHTH: The grounds for divorce that are alleged in the Amended Verified Counterclaim were proven as follows: That commencing on or about November 7, 2005, and continuing for a period of more than one year immediately prior to the commencement of this action, the Plaintiff left the marital residence of the parties located at 94 Waterbury Parkway, Cortlandt Manor, New york 10567 and did not return. Such absence continued,

without just cause or justification and was without the Defendant's consent.

NINTH: (intentionally crossed out by Court)

TENTH: Equitable distribution and ancillary issues shall be pursuant to the decision of the court; as follows:

a: That the real property located at 94 Waterbury Parkway, Cortlandt Manor, New York 10567 was marital property held by the parties. The proceeds of the sale of the marital home shall be distributed fifty(50) percent to each party.

b: The two automobiles of the marriage were distributed as thus: the 1997 Dodge Stratus, to the Defendant Husband and the 1988 Plymouth Voyager to the Plaintiff Wife.

c: The proceeds of the Chase Account ending in 1765 were combined with the funds in the checking account ending 9001. The combined total of Six thousand and Seven Hundred dollars ($6,700.00) was paid to the United States Treasury and Six Hundred Dollars ($600.00) was paid to New York State.

d: All of the contents of the marital home shall remain in the possession of the Defendant husband excluding Plaintiff wife's jewelry, which the plaintiff shall retrieve.

e: Defendant husband shall retain sole possession and control of the assets in his IKON work pension plan in exchange for Plaintiff wife keeping the Roth IRA account.

f: Plaintiff wife shall credit defendant

husband for one half of the Four Thousand Five Hundred Dollars ($4,500.00) or $2,250.00 which was in the traditional IRA account ending in 7919.

g: Plaintiff wife will give to defendant the amount of Three Thousand Six Hundered and Thirty ($3,630.00) representing one half of the value of the Discovery MFS Fund Account ending in 8263.

h: There is no real estate broker's license and the real estate broker's business there is no determinable value to same.

i: Plaintiff wife will pay to the Defendant Husband the amount of Six Hundred ($600.00) monthly for six months as maintenance.

j: Defendant will reimburse Plaintiff for one half the AARP Credit card debt. Plaintiff to receive the sum of Three Thousand Eight Hundred Twenty Two Dollars and Forty Six Cents ($3,822.46). Defendant will not be required to reimburse Plaintiff for the $9,000.00 credit card debt.

k: Defendant will pay Plaintiff Fifty percent (50%) of the proceeds of the software in the event that the book is published with referenced to the particular Video game.

ELEVENTH: The Court after considered all relevant factors under DRL 236(b)(6), made the following determinations. The The marriage is of 34 years duration, the wife is gainfully employed, the husband has worked primarily at developing a soft ware game to be sold.

TWELFTH: There are no unemancipated children of the marriage.

THIRTEENTH: The Plaintiff's address is 214 West Lee Avenue, Bessemer City, North Carolina, 28016 and the Social Security Number is 149-54-0623. The Defendant's address is 75-25 153rd Street, Kew gardens, New York 11367 -4002 and Social Security Number is 061-44-3355.

FOURTEENTH: Neither party is currently covered by any group health plans.

FIFTEENTH: Defendant may resume the use of the prior surname: HASEGAWA.

CONCLUSIONS OF LAW

FIRST: That jurisdiction as required by section 230 of the Domestic Relations Law has been obtained.

SECOND: That Defendant is entitled to a judgment of divorce and the granting of the incidental relief awarded herein in the JUDGMENT signed this date.

Dated: White Plains, New York

_____, 2007

10/11/07

ENTER:

(signed)

_____

HON. LA TIA MARTIN, Justice Supreme Court